

**WISCONSIN TREATMENT PROVIDERS
SAY
*HIPAA HIPAA
HOORAY!***




*October 24, 2002
(171 More Days)*

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HIPAA Regulations

| Regulation | Enacted | Compliance |
|--|---|------------------------------------|
| Standards for Electronic Transactions & Code Sets |  | 10/16/2002 |
| Privacy of Pt Health Information |  | 4/14/2003 |
| Security for Electronic Information | | Proposed |
| Unique ID for Employers and Providers |  | 7/30/2002 |
| Unique ID for Health Plans | | TBA: 8/02 target |
| Standards for Claims Attachments | | TBA: 8/02 target |
| Standards: (1) Elect Signature (2) First Report of Injury & (3) Unique ID for Individuals | | TBA: Pending external input |

Deadlines for Compliance

- Final privacy regulations issued August 14, 2002
- Deadline for compliance - **April 14, 2003**
- Small health plans (annual receipts of \$5 million or less) deadline for compliance is April 14, 2004
- Business associate provisions compliance date extended until April 14, 2004
- Code set transaction extension filed – October 16, 2003 compliance date

HIPAA Privacy Proposed Work Plan Deadline:



Planning: Aug 2002

- Conduct HIPAA Awareness
- Assign Privacy Officer and develop job description
- Establish and convene HIPAA Task Force
- Surveys/Departmental Gap Analyses
- Establish compliance plan
- Monitor HIPAA legal developments
- Work with Wisconsin BSAS on reporting and funding issues

Patient Rights Systems & Forms: Nov 2002

- Create a system for patient's access to records
- Create a system to account for disclosures of PHI
- Create a system for correcting/amending patient records
- Create a system for grievances
- Develop a notice of privacy practices and a system for dissemination
- Revise existing consent/authorization forms

Policies and Procedures: Jan 2003

- Review existing policies and procedures
- Check for compliance against Privacy Rule
- Check for compliance against requirements in 42 CFR 2, state laws and JCAHO
- Develop additional policies required: patient inspection and copying, amendment of records, accounting of disclosures, patient complaints, various types of disclosures and other policies mandated by the privacy rule including marketing and fundraising policies
- Submit to management team in November

Training & HR Issues: Mar 2003

- Review confidentiality training and develop privacy curriculum for staff
- Develop or update privacy training and orientation for all employees, volunteers, medical staff, and other appropriate third parties
- Develop a mechanism for ongoing information privacy awareness reminders and updates
- Update human resources documentation (job descriptions, orientation procedures, training documentation in personnel file)

Business Associates

- Identify key business associates/qualified service organizations
- Inventory existing agreements
- Review existing agreements
- Develop model contract language
- Contact business associates, vendors, other partners who use or have access to PHI to understand their HIPAA plans
- Obtain signed agreements that comply with privacy rule and 42 CFR Part 2

Applicability

42 CFR Part 2

- Federally-assisted Programs
- Programs is an individual or entity other than a general medical care facility who holds itself out as providing and provides alcohol or drug abuse diagnosis, treatment or referral for treatment
- Definition of federally-assisted
- Also includes an identified unit within a general medical facility or medical personnel whose primary function is the provision of alcohol or drug abuse diagnosis, treatment or referral for treatment

HIPAA Privacy Rule

- Health Plans
- Health Care Clearinghouses
- Health Care Providers that transmit electronic information in connection with a transaction for which a standard has been adopted

Who is considered a patient?

42 CFR Part 2

- Any individual who has applied for or been given diagnosis or treatment for alcohol or drug abuse at a federally-assisted program
- Includes any individual who after arrest on a criminal charge is identified as an alcohol or drug abuser in order to determine that individual's eligibility to participate in a program

HIPAA

- The person who is the subject of the protected health information
- Does not include employment records or records governed by FERPA

Protected Health Information

Individually Identifiable Health Information which is:

- Created or received by a health care provider, health plan, employer or health care clearinghouse
- Related to the past, present or future physical or mental health or condition of an individual
- Related to the provision of health care to an individual
- Related to the past, present or future payment for the provision of health care to an individual
- Identifies the individual or there is reasonable basis to believe that the information can be used to identify the individual
- Is transmitted or maintained in any medium

Patient Identifying Information

42 CFR Part 2

- Name
- Address
- Social Security Number
- Fingerprints
- Photograph
- Other similar info by which the identity of a patient can be determined with reasonable accuracy and speed either directly or by reference to other publicly available info
- Does not include a number assigned to a patient by a program - different than HIPAA

HIPAA

- Same: 42 CFR Part 2 PLUS
- Address is defined more broadly
- Names of relatives/household
- Name of employer
- Variety of dates
- Telephone/fax number
- E-mail address/URL/IP
- Medical record number
- Account/health plan number
- Vehicle or other device serial number

Written Authorization

42 CFR Part 2 Consent

- Program or person making disclosure
- Person /organization to whom disclosure is made
- Name of patient
- Purpose of disclosure
- How much/what kind of info to be disclosed
- Revocation provision
- Date, event or condition of expiration
- Signature
- Date

HIPAA Authorization

- Description of info to be disclosed
- Name of person(s) authorized to make the disclosure
- Name of person(s) to whom disclosure is made
- Description of purpose of disclosure
- Expiration date or event
- Signature of individual and date
- Description of authority to act if signed by personal rep.
- Statement on right to revoke, exceptions to revocation and description of how to revoke or a reference to the Notice of Privacy Practices
- Statement that treatment, payment, enrollment or eligibility for benefits may not be conditioned on the authorization or if permitted, a statement about the consequences for refusing to sign
- Information is subject to redisclosure

Prohibition on Redisclosure

42 CFR Part 2

- Can only disclose pursuant to a consent or other permitted purpose
- Prohibition against redisclosure of information to another - can only disclose to those named in consent
- Must include prohibition statement with consent
- Any recipient of information is subject to the rule and may not disclose the information except as permitted by the rule

HIPAA

- No specific prohibition against redisclosure
- However, if the entity is a covered entity or a business associate, privacy protections continue to apply

Patient Access to Records

42 CFR Part 2

- No consent nor authorization required
- Also subject to restriction on use 2.23(b)

HIPAA

- Patient has right to access own designated record set
- Exceptions:
 - Psychotherapy notes
 - Information compiled in anticipation of civil, criminal or administrative proceeding
 - Info subject to CLIA or exempt from CLIA

Subpoenas/Court Orders

42 CFR Part 2

- A subpoena alone is not sufficient to release information - a court order is also required - must be issued by judge in accordance with specific procedures and criteria

HIPAA

- Can disclose in response to a court (or administrative tribunal) order only, or a subpoena and court order, or by discovery request or lawful process alone

Patient Rights

42 CFR Part 2

- Patients must be given written summary of confidentiality provisions and notice that Federal law and regulations protect the confidentiality of alcohol and drug abuse patient records

HIPAA

- Receive notice of covered entity's privacy practices
- Access own information
- Request corrections of erroneous/incomplete information
- Request restriction of further disclosures
- Request transmittal of communications in an alternative manner
- Obtain an accounting of disclosures

Inmates

- May deny request to inspect & obtain copy of PHI
- No accounting of disclosure
- No right to notice of privacy practices
- No complaint with entity's privacy officer
- May lodge complaint with Sec. of HHS

Communications Within A Program

42 CFR Part 2

- Communication is permissible under the treatment, payment and healthcare operations provisions
- No patient authorization is required

HIPAA

- For treatment, payment and health care operations, may require a broad consent - i.e. consent for use for XYZ program, so that consent for treatment would apply to all program staff.
- TPO consent may go away under NPRM

Minors

42 CFR Part 2

- If minor can get treatment under state law, only minor can also give consent
- Provider can refuse to treat unless minor signs consent to disclose to parents for reimbursement - unless prohibited by state law
- If state requires parental signature, Part 2 requires both minor and parent consent

HIPAA

- Parent considered “personal representative” of child and has right to see child’s health information
- Minor can obtain treatment without parental/guardian consent if allowed by law or court or other person authorized by law to consent; or if parents agree to a minor - physician confidential communication
- HIPAA defers to state law

Deceased Persons

42 CFR Part 2

- Applies to any disclosure that would identify a deceased patient as a patient
- Written consent to disclosure may be given by executor, administrator or personal representative appointed by State law
- Otherwise, consent can be given by spouse or relative
- Rule does not apply to disclosures related to cause of death or collection of death or other vital statistics - 2.15 (b)(1)

HIPAA

- A covered entity must comply with the requirements of this subpart with respect to the protected health information of a deceased individual
- If by law executor, administrator or other person has authority to act on behalf of deceased person or estate, they are treated as a personal representative

Medical Emergencies

42 CFR Part 2

- Can disclose information to medical personnel to extent necessary for emergency
- Narrowly construed - must be immediate threat to health and require immediate medical intervention
- Must document certain elements in patient's record

HIPAA

- May use or disclose PHI in a medical emergency without authorization, provided the treatment agency furnishes the notice of privacy practices as soon is reasonably practicable after the emergency

Child Abuse/Neglect

42 CFR Part 2

- Specific exception allows reporting of child abuse/neglect
- Restrictions on disclosure and use continue to apply to the original alcohol and drug abuse patient records maintained by the program including their disclosure or use for criminal or civil proceedings which may arise out of the report

HIPAA

- Allows a report to appropriate authorities of abuse, including child abuse

Law Enforcement

42 CFR Part 2

- Generally cannot disclose information without subpoena and court order - arrest / search warrant not sufficient
- Can disclose for crime committed by patients on program premises or against program personnel or a threat to commit such a crime

HIPAA

- Can disclose to law enforcement and jails without consent/authorization:
- As required by law
- With a subpoena
- With a warrant
- To locate missing persons
- Victim of crime
- Crime on program premises

Public Health Authorities/Disease Reporting

42 CFR Part 2

- No specific exemption for reporting - need consent, court order, or can report if done anonymously
- Can disclose to FDA if error in manufacturing e.g., labeling or sale of drug used in treatment - exclusive purpose notifying patients and their physicians of potential dangers

HIPAA

- Broad authority to disclose to public health authorities for a variety of circumstances without patient authorization

Licensing/Health Oversight/QI Activities

42 CFR Part 2

- Audit and evaluation exception 2.53
- Agency must sign written agreement to comply with limitations on redisclosure and use
- When records are copied or removed must agree in writing to follow 2.16, destroy PHI upon completion of audit & comply with limitations on disclosure

HIPAA

- May disclose to health oversight agency for audits, investigations, inspections, licensure or disciplinary actions, civil/administrative/criminal proceedings or other oversight activities- no consent or agreement required
- Accrediting agencies - will need business associate agreement

HIPAA Addresses Additional Disclosures

- Facility Directories
- Marketing
- Fundraising
- Psychotherapy Notes
- To Secretary of HHS
- National security/intelligence activities
- Protective services for President
- Medical suitability determinations
- Workers Compensation

Other HIPAA Privacy Mandates

- Designate a Privacy Officer
- Adopt written comprehensive policies
- Train staff routinely
- Personnel sanctions for breaches
- Establish a grievance process
- Physical safeguards
- Mitigate results of violations
- Minimum Necessary Requirement
- Privacy Notice
- Accounting of Disclosures
- Correction of erroneous/incomplete information

QSO's/Business Associates

42 CFR Part 2

QSOs

- Must enter into QSO Agreement to allow sharing of information
- Person/agency that provides services to program and will have access to confidential information

HIPAA

Business Associates

- Must enter into Business Associate Agreement to allow sharing of information
- Person/agency that provides services to program involving confidential information or HIPAA-related activity
- Many requirements consult the rule

Records Format/Psychotherapy Notes

42 CFR Part 2

- Makes no distinction - if “psychotherapy” notes were part of treatment record, whole record would be protected under 42 CFR Part 2

HIPAA

- Treats psychotherapy notes as separate part of record with additional protections
- Can only be disclosed through authorization
- Can be used to defend legal action

Security

42 CFR Part 2

- Records must be maintained in secure room, locked cabinet, safe etc.
- Must have written procedures which regulate access/control of records

HIPAA

- Separate regulations for security
- Apply to written, oral and electronic records
- Need security policies/procedures
- Much more extensive

Enforcement, Compliance and Penalties

42 CFR Part 2

- Enforcement - Dept. of Health and Human Services (HHS)
- Penalties - \$500/person for 1st offense, up to \$5,000 for each subsequent offense

HIPAA

- Enforcement - HHS' Office for Civil Rights
- Penalties - Civil - \$100/person per violation up to \$25,000
- Criminal - \$50,000/up to 1 year imprisonment for wrongful disclosure
- Intent to sell, transfer or use PHI for gain - \$250,000/up to 10 years imprisonment